IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE R.BASANT

FRIDAY, THE 22ND JUNE 2007 / 1ST ASHADHA 1929

Crl.MC.No. 2000 of 2007()

CRA.622/2005 of III ADDL.SESSIONS COURT, KOLLAM
CC.852/2004 of JUDL.MAGISTRATE OF FIRST CLASS-I, KOTTARAKKARA

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PETITIONER:

RAJAGOPALA PILLAI, S/O.KESAVA PILLAI,
KESAVA VILASOM, THEVANNOOR MURI,
KOTTARAKKARA.

BY ADV. SRI.C.R.SIVAKUMAR

RESPONDENTS:
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1. JOHN, JOHNSON NIVAS,
AMPALAKARA MURI, VALAKOM VILLAGE,
KOTTARAKKARA.

2. THE STATE OF KERALA, REPRESENTED BY
THE PUBLIC PROSECUTOR, HIGH COURT OF KERALA,
ERNAKULAM.

BY ADV. SRI.B.MOHANLAL
PUBLIC PROSECUTOR SRI.GIKKU JACOB

THIS CRIMINAL MISC. CASE HAVING COME UP FOR ADMISSION ON 22/06/2007, THE COURT ON THE SAME DAY PASSED THE FOLLOWING:

R.BASANT, J.

Crl.M.C.No.2000 of 2007

Dated this the 22nd day of June 2007

O R D E R

The petitioner has been found guilty, convicted and sentenced in a prosecution under Section 138 of the Negotiable Instruments Act. The verdict of guilty, conviction and sentence have become final with the order passed by this court in revision by which the sentence was reduced to imprisonment till rising of court. A further direction was issued that the petitioner must pay an amount of Rs.5,20,000/- as compensation and in default to undergo S.I for a period of three months.

2. The petitioner, along with the respondent/complainant, now makes a prayer that the matter having been settled and the complainant having compounded the offence, the dictum in Sabu George v. Home Secretary [2007(1) KLT 982] may be invoked and the post revision composition may be accepted.

3. The dictum in Sabu George v. Home Secretary [2007 (1) KLT 982] only shows that extraordinary inherent powers can

be invoked to avoid miscarriage of justice even at the post revision stage. The said dictum has its foundation on the fact that but for the acceptance of the composition, the accused would have been obliged to undergo incarceration in prison for a specified period of time. To avoid such consequences inspite of composition, the powers under Section 482 Cr.P.C were invoked. That and that alone is the dictum in Sabu George v. Home Secretary [2007(1) KLT 982]. Sabu George v. Home Secretary [2007(1) KLT 982] is not authority for the proposition that in every case of post revision composition, the powers under Section 482 Cr.P.C can or must be invoked mechanically by this court.

4. In the facts and circumstances of this case, I am not at all persuaded to invoke the dictum in Sabu George v. Home Secretary [2007(1) KLT 982]. The petitioner faces only a sentence of imprisonment till rising of court. To save him from that punishment, I am not persuaded to invoke the powers under Section 482 Cr.P.C.

5. What remains is only a direction for payment of compensation. It is submitted that the said amount has already

been paid. The direction was only “to pay” compensation and not to deposit the compensation. If the amount has been paid by the petitioner and received by the complainant, there can be no question of execution of any default sentence. The position has been made crystal clear in Girish v. Muthoot Capital Service (P) Ltd. [2007(1) KLT 16]. In these circumstances, I find no reason to invoke the powers under Section 482 Cr.P.C.

6. This Criminal Miscellaneous Case is accordingly dismissed but with the above specific observation - that if payment of compensation is shown to have been made, there can be no question of execution of the default sentence.

7. Hand over copy of this order to the learned counsel for the petitioner.

(R.BASANT, JUDGE)

jsr

// True Copy// PA to Judge

R.BASANT, J.

CRL.M.CNo.

ORDER

21ST DAY OF MAY2007